IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.366 OF 2004

Akaram Namu Khamkar & Ors. .. Appellants

Versus

Rangrao Dadu Khamkar .. Respondent

Mr.Pratap Patil for appellants

Mr.V.B.Rajure, for respondent

CORAM : P.V.KAKADE, J.

DATE : 8TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order dated 14th January 2004 passed by Addl. District Judge, Kolhapur dismissing the appeal and confirming the order passed by the Civil Judge, Junior Division, Malakapur decreeing the suit for perpetual injunction against the defendants.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his possession on the suit property along with title thereto and the present appellants were causing obstruction to his possession on the ground that they were in possession of 1/2 share of the suit property with permission of defendant no.6. This plea was negated by the learned trial judge while decreeing the suit. Hence the appeal was carried to the District Court, Kolhapur. The learned District Judge accepted the findings recorded by the learned trial judge as legal and proper and as such dismissed the appeal. Hence the present appeal.

4. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The only dispute between the parties revolved around the allegation that the defendant Nos.1 to 5 were in possession by virtue of permission given by defendant no.6 in 1/2 share of the property. This aspect was not proved by cogent and conclusive evidence

and as such the decree came to be passed against the defendants. In view of this aspect I am satisfied that both the courts below have appreciated the available evidence in proper perspective and therefore, it would brook no interference.

5. In the result the appeal stands dismissed.

6. Consequently the civil application no.334 of 2004 also stands dismissed.

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